



Public Employees for Environmental Responsibility

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Freedom of Information Officer
U.S. Environmental Protection Agency

RE: FREEDOM OF INFORMATION ACT REQUEST

VIA FOIAONLINE

Dear FOIA Officer:

In 2010, EPA requested comments on the value and cost of periodic cleaning and inspection of public water distribution system storage tanks as part of EPA's consideration of proposed revisions to the Total Coliform Rule. (See 75 FR 40926, July 14, 2010.) On October 15, 2014, EPA held a follow-up public webinar to collect more data and information on this topic. (See www.federalregister.gov/articles/2014/09/04/2014-21073/notice-of-public-meeting-and-webinar-distribution-system-storage-facility-inspection-and-cleaning.) EPA invited individuals or organizations interested in making a statement during the webinar to send presentation materials to SFIWebinar@cadmusgroup.com. EPA also stated that the public could send any additional comments or written statements on the webinar to the same address after the public meeting and webinar. Members of the public were also invited to contact conley.sean@epa.gov with questions or comments.

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests the following materials, which do not appear to be publicly available, for the period of **September 4, 2014 to present**:

- (1) All presentation materials sent to either of the email addresses listed above in advance of the webinar; and
- (2) All public comments sent to either of the addresses above after the webinar.

Of course, our request does *not* include the public comments on the 2010 Federal Register notice, which are available online.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of the EPA related to the important topic of the potential need for rules governing the inspection and cleaning of public water distribution system storage tanks.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The subject matter of the request is the safety of public water distribution system storage tanks. Disclosing the public comments that EPA received on a public meeting and webinar on this very topic is meaningfully informative in relation to our request’s subject matter because the public will better understand the issues that commenters brought to EPA’s attention. If EPA revises the Total Coliform Rule to include requirements for inspecting and cleaning water storage tanks for public water distribution systems (or if EPA fails to do so), the public will be able to see whether and how EPA considered commenters’ concerns.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

Americans count on the Environmental Protection Agency to ensure that the water they drink is safe, thus EPA's consideration of the necessity of periodic cleaning and inspection of public water storage tanks is a topic of wide and obvious public interest. Furthermore, the public has a strong financial interest in seeing that tax dollars are spent effectively. All taxpayers contribute funding for EPA's activities and have an interest in the agency's efficient handling of resources. If EPA solicited comments that it then failed to consider, this would suggest the inefficient handling of taxpayer dollars.

PEER's legal staff has expertise in interpreting environmental, health, and safety laws, and explaining them to the public. PEER intends to carefully review the materials provided through this FOIA request and provide both a summary of our findings, as well as some or all of the responsive documents, to the general public through the following channels, through which PEER generates an average of 1.5 mainstream news articles per day:

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.

In *Judicial Watch, Inc. v. Rossotti*, an agency argued that a request had failed to state an intent to disseminate – and a method for disseminating – the information requested, even though the requestor's letter explained that the organization's mission was to obtain information under the FOIA and listed nine ways in which it regularly communicated collection information to the public, including through press releases, web page postings, and a newsletter. The Court emphatically rejected the agency's argument, finding that the requestor had “explained, in detailed and non-conclusory terms--again, all that FOIA requires--exactly how and to whom it will disseminate the information it receives.” 326 F. 3d 1309, 1315 (D.C. Cir. 2003).

Similarly, PEER has explained in detailed and non-conclusory terms exactly how and to whom we will disseminate the information we obtain from the request. It is difficult to respond with further specificity since we (like all FOIA requestors seeking a fee waiver) do not have the benefit of having seen the responsive materials yet. However, we would be happy to answer any additional questions you may have regarding our specific intent to disseminate information to the general public.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

Currently EPA has not – to our knowledge – publicly released the comments it obtained regarding the October 2014 webinar. Thus the disclosure will enhance, to a significant extent, the public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure. Although the public can access public comments submitted in 2010, it does not have access to comments submitted after the October 2014 webinar, and significant facts or new data may have arisen in the interim.

With respect to this factor, EPA's FOIA regulations state, "FOI Offices will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is 'important' enough to be made public." 40 C.F.R. 2.107(1)(iv).

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. As this is a very straightforward request, I look forward to receiving the agency's final response within 20 working days.

Cordially,

/s/ Laura Dumais

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